

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michael B. Whitt,

Complainant,
vs.

Jerry Maas,

Respondent.

ORDER FINDING
NO PRIMA FACIE VIOLATION AND
DISMISSING COMPLAINT

On February 11, 2010, Michael Whitt filed a Complaint with the Office of Administrative Hearings alleging that Jerry Maas violated an unidentified provision of Minn. Stat. Chap. 211B by using email addresses he obtained through the course of his employment as Credit River Township Clerk to send correspondence to township residents promoting his campaign for re-election.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on February 11, 2010, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on February 11, 2010.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth a prima facie violation of Minn. Stat. § 211B.06.

ORDER

IT IS ORDERED:

That the Complaint filed by Michael B. Whitt against Jerry Maas is **DISMISSED**.

Dated: February 12, 2010

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § 14.63 to 14.6.

MEMORANDUM

The Respondent, Jerry Maas, is the current Credit River Township Clerk. He is running for re-election in the upcoming March 9, 2010 township elections. The Complaint alleges that Mr. Mass violated fair campaign practices laws (Minnesota Statutes Chapter 211B) by using email addresses he allegedly obtained through the course of his employment as Township Clerk to send correspondence (emails and newsletters) to township residents promoting his candidacy for re-election. The Complainant also asserts that Mr. Maas cut and pasted email correspondence between Credit River Township officials into his newsletter in an “untoward mixing of personal and government business.”

The Complainant failed to identify what provision of Minnesota Statutes Chapter 211B he believes Mr. Maas violated by allegedly using emails he obtained through his position as Township Clerk. Pursuant to Minn. Stat. § 211B.32, subd. 3, the complaint must detail the factual basis for the claim that a violation of law has occurred on a form prescribed by the Office of Administrative Hearings. The complaint form requires complainants to “give the statutory cite to the part of Minnesota Statutes Chapter 211A or 211B that [they] believe has been violated.” Minnesota Statutes Chapter 211A governs campaign financial reporting laws for local and municipal candidates.

The Administrative Law Judge concludes that the Complainant has failed to state a claim under the Fair Campaign Practices Act. Nothing under Minnesota Statutes Chapter 211B prohibits a candidate from using email addresses he allegedly obtained through the course of his employment as a public official. The alleged conduct may violate provisions of the Government Data Practices Act (Minn. Stat. Chap. 13) or some other statute or ordinance, but it is not a matter for this judge to decide on the basis of a Campaign Complaint. The campaign complaint process is limited to alleged violations of Minnesota Statutes Chapters 211A (Campaign Finance Act) and 211B (Fair Campaign Practices Act). Because the conduct does not amount to a violation of any provision of Chapters 211A or 211B, the Administrative Law Judge has no jurisdiction to consider this violation. For these reasons, the Complaint fails to identify a *prima facie* violation of campaign law and therefore is dismissed.

Moreover, the Administrative Law Judge notes that the emails attached to the Campaign Complaint as evidence of the alleged unfair campaign practice are

more than one year old. Under Minn. Stat. §211B.32, subd. 2, complaints must be filed within one year after the occurrence of the act that is the substance of the complaint.

Finally, the Complainant requested in his cover letter that his complaint be investigated. The Office of Administrative Hearings does not conduct an investigation at any stage of the campaign complaint process. Instead, the burden rests solely with the Complainant to investigate and prove up any alleged violation of the Fair Campaign Practices Act.¹

For all of these reasons, the Complaint is dismissed.

R.C.L.

¹ Minn. Stat. § 211B.32 to 211B.37.